J & W Drywall Contractors, Inc., J & W Drywall and Plastering Company, Inc., J & W Drywall Lather Plastering Co., Inc., and William Williams *and* Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO. Case 7–CA–32260

February 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by the Union on August 28 and September 17, 1991, respectively, the General Counsel of the National Labor Relations Board issued a complaint against J & W Drywall Contractors, Inc., J & W Drywall and Plastering Company, Inc., J & W Drywall Lather Plastering Co., Inc., and William Williams, the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, the amended charge, and the complaint, the Respondents have failed to file an answer.

On November 25, 1991, the General Counsel filed Motions to Transfer Case to the Board and for Default Judgment, with exhibits attached. On December 2, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Default Judgment should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that the Acting Regional Attorney, by letter dated October 18, 1991, notified the Respondents that unless an answer was received by November 1, 1991, a Motion for Default Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents, Michigan corporations, are engaged in the construction industry as drywall and plastering contractors. Their only office and place of business is located at 7360 W. Chicago, in Detroit, Michigan. At all times material, the Respondents have been affiliated business enterprises with common officers, ownership, management, and supervision; have formulated and administered a common labor policy affecting employees of these enterprises; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have serviced the same customers; and have held themselves out to the public and to their customers as a single-integrated business enterprise. The complaint alleges, and we find, that the Respondents are, and at all material times have been, alter egos of each other and/or a single employer within the meaning of the Act.

During the year ending December 31, 1990, a representative period, the Respondents have purchased and caused to be transported and delivered to their place of business and various jobsites within the State of Michigan goods and materials valued in excess of $50,000. Such goods and materials were received from other enterprises located within the State of Michigan, including Dale Enterprises, Inc., each of which other enterprises had received the goods and materials directly from points located outside the State of Michigan.

In addition, at all times material, Respondent J & W Drywall Lather Plastering Co., Inc. has been an employer-member of the multiemployer Detroit Association of Wall and Ceiling Contractors (the Association). During the year ending December 31, 1990, the employer-members of the Association collectively purchased and received at various locations within the State of Michigan goods and materials valued in excess of $50,000 and delivered to those locations directly from points located outside the State of Michigan.

We find that the Respondents are single employer and/or alter ego enterprises, that they are an employer engaged in commerce within the mean-

[1] The complaint and subsequent letter from the Acting Regional Attorney were served on the Respondents by certified mail. The Respondents' refusal to claim this certified mail does not defeat the purposes of the Act. E.g., *Fletcher Oil Co.*, 299 NLRB No. 77 fn. 2 (Aug. 23, 1990).

ing of Section 2(6) and (7) of the Act, and that the Union, Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondents constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All journeymen and apprentice plasterers employed by the Respondents, but excluding guards and supervisors as defined in the Act.

As a member of the Detroit Association of Wall and Ceiling Contractors, Respondent J & W Drywall Lather Plastering Company, Inc. has authorized that multiemployer organization to bargain collectively on the Respondents' behalf with the Union. The Respondents have been parties to a series of collective-bargaining agreements between the Association and the Union, the most recent of which is effective by its terms from July 1, 1991, until June 1, 1992, and which, unless properly terminated, is automatically renewed from year to year thereafter. By virtue of these agreements, the Union has been and is the exclusive 9(a) representative of the Respondents' unit employees.

The current collective-bargaining agreement provides, inter alia, for the Respondents to make periodic payments into various fringe benefit funds on behalf of unit employees and for the Respondents to submit monthly fringe benefit reports. Since about February 17, 1991,[2] the Respondents have ceased making the fringe benefit fund contributions required by the contract. Since about February 27, the Respondents have failed and refused to pay liquidated damages owed due to the nonpayment of the required fringe benefit fund contributions. Finally, since about February 27, the Respondents have failed and refused to submit accurate monthly fringe benefit reports required by the collective-bargaining agreement. By the foregoing acts, the Respondents have violated Section 8(a)(5) and (1).

CONCLUSIONS OF LAW

By failing to abide by the terms of a current collective-bargaining agreement with the Union requiring periodic contributions to fringe benefit funds, payment of liquidated damages for the failure to make required benefit fund contributions, and submission of monthly fringe benefit reports, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, we shall order the Respondents to abide by the terms of the July 1, 1991, to June 1, 1992 collective-bargaining agreement between the Association and the Union, including the contractual provisions for payments to various employee fringe benefit funds and for the submission of monthly fringe benefit reports. We shall also order the Respondents to make whole unit employees for any losses ensuing from their unlawful failure to make the required benefit fund payments. Such sums shall be computed in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Finally, we shall order the Respondents to make the various employee benefit funds whole for any losses resulting from their unlawful failure to make contractually required payments to those funds.[3]

ORDER

The National Labor Relations Board orders that the Respondents, J & W Drywall Contractors, Inc., J & W Drywall and Plastering Company, Inc., J & W Drywall Lather Plastering Co., Inc., and William Williams, Detroit, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO as the exclusive bargaining representative of an appropriate unit of all journeymen and apprentice plasterers employed by the Respondents, by failing to adhere to the terms of a collective-bargaining agreement, effective from July 1, 1991, until June 1, 1992, between the Detroit Association of Wall and Ceiling Contractors and the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

[2] All dates are in 1991, unless otherwise stated.

[3] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide for the payment of a fixed rate of interest on unlawfully withheld fund payments at the adjudicatory stage of a proceeding. We leave to the compliance stage the question whether the Respondents must pay any additional amounts into the benefit funds in order to satisfy our make-whole remedy. Such additional amounts shall be determined in the manner set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

ercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the terms of the current collective-bargaining agreement with the Union, including provisions requiring payments to various employee fringe benefit funds and the submission of accurate monthly fringe benefit reports.

(b) Make unit employees whole, in the manner set forth in the remedy section of this decision, by reimbursing them, with interest, for any losses resulting from the unlawful failure to make contractually required benefit fund payments.

(c) In accord with the terms of the current collective-bargaining agreement with the Union, provide accurate copies of all monthly benefit fund reports which the Respondents unlawfully failed to submit and make the various contractual employee benefit funds whole, in the manner set forth in the remedy section of this decision, for any payments which the Respondents have unlawfully failed to make.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at their facility in Detroit, Michigan, and at jobsites where unit employees are working, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Local 67, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO as the exclusive bargaining representative of an appropriate unit of our journeymen and apprentice plasterers, by failing to adhere to the terms of a collective-bargaining agreement, effective from July 1, 1991, until June 1, 1992, between the Detroit Association of Wall and Ceiling Contractors and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by the terms of our current collective-bargaining agreement with the Union, including provisions requiring payments to various employee fringe benefit funds and the submission of accurate monthly fringe benefit reports.

WE WILL make our bargaining unit employees whole by reimbursing them, with interest, for any losses they incurred as a result of our unlawful failure to make contractually required benefit fund payments.

WE WILL, in accord with the terms of our current collective-bargaining agreement with the Union, provide accurate copies of all monthly benefit fund reports which we have previously failed to submit and WE WILL make the various contractual employee benefit funds whole for any payments which we have unlawfully failed to make.

J & W DRYWALL CONTRACTORS, INC., J & W DRYWALL AND PLASTERING COMPANY, INC., J & W DRYWALL LATHER PLASTERING CO., INC., AND WILLIAM WILLIAMS